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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/559,609

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Shinji Eritate

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FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

EXAMINER

ECHELMMEYER, ALIX ELIZABETH

ART UNIT

PAPER NUMBER

1795

MAIL DATE

DELIVERY MODE

01/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/559,609	<b>Applicant(s)</b> ERITATE ET AL.	
	<b>Examiner</b> Alix Elizabeth Echelmeyer	<b>Art Unit</b> 1795	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 14, 2008 has been entered. Additionally, Applicant's Supplemental Amendment filed on December 19, 2008 has been received/

Claims 1 and 5 have been amended. Claims 1-7 are pending and are rejected for the reasons given below.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsusaka et al. (US 2002/0001744).

Tsusaka et al. teach a membrane electrode assembly (MEA) for a solid polymer fuel cell (abstract).

Regarding claims 1, 3 and 6, Tsusaka et al. teach that the MEA comprises a polymer electrolyte membrane having catalyst layers on either side, wherein the membrane and catalyst layers include a metalloxane polymer, or compound having activity to an active energy ray, that infiltrates both the membrane and the catalyst layer (Figure 1; [0025]; [0028]; [0029]). In addition to the metalloxane monomer, the membrane includes a compound having proton conductivity ([0050]-[0054]).

Tsusaka et al. teach that the MEA is made by bonding the catalyst layer, containing a metalloxane monomer, to the membrane, also containing a metalloxane monomer, by thermal bonding, or active energy ray ([0064]). The thermal bonding causes the metalloxane to polymerize, bonding the layers together ([0067], [0076]-[0078]).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsusaka et al. as applied to claims 1 and 3 above, and in further view of Fuglevand et al. (US 6,218,035).

The teachings of Tsusaka et al. as discussed above are incorporated herein.

Tsusaka et al. teach a reinforcement member for the membrane ([0062]) but fail to teach that the reinforcement member is an electrical insulator.

With regard to claim 5, the reinforcement member of Tsusaka et al. is part of the catalyst layer, so it is provided on the catalyst layer.

Fuglevand et al. teach a support matrix, or reinforcement member, for use in their solid polymer proton exchange membrane fuel cell (column 19 lines 39-40). Grafted polyethylene is provided as an example of the reinforcement member (column 19 lines 59-61). The instant specification discloses ethylene as a suitable material for the reinforcement layer ([0063]).

It would be desirable to use a non-conductive reinforcement member, such as the one of Fuglevand et al., in the membrane of Tsusaka et al. since a non-conductive reinforcement member would provide support without interfering with the electronic operation of the fuel cell.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a non-conductive reinforcement member, such as the one of Fuglevand et al., in the membrane of Tsusaka et al. since a non-conductive reinforcement member would provide support without interfering with the electronic operation of the fuel cell.

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6. Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsusaka et al. as applied to claim 3 above, and further in view of Akita et al. (US 6,523,699).

The teachings of Tsusaka et al. as discussed above are incorporated herein.

Tsusaka et al. fail to teach the thickness of the catalyst and electrode layers, only that the layers are desired to be thin ([0011]; [0027]).

Akita et al. teach a fuel cell having excellent catalytic activity (abstract).

Akita et al. further teach that the platinum catalyst should be 50-250  $\mu\text{m}$  thick. According to Akita et al., for catalyst thicknesses less than 50  $\mu\text{m}$ , there could be an insufficient amount of catalyst, and for thicknesses greater than 250  $\mu\text{m}$ , the possibility of the catalyst surface becoming unstable arises (column 8 lines 31-44).

As for the limitation concerning the depth of infiltration into the electrode catalyst layer, the infiltration would necessarily be equal to or less than the thickness of the electrode catalyst layer, since it would be impossible for the membrane to infiltrate the electrode catalyst layer further than the thickness of the layer. Additionally, since the MEA of Tsusaka et al. is made by the same method of the instant invention, the infiltration depth would inherently meet this limitation.

It would be desirable to make the platinum catalyst of Tsusaka et al. 50-250  $\mu\text{m}$  thick, encompassing most of the claimed range, since at smaller thicknesses, there could be an insufficient amount of catalyst, while at larger thicknesses, the catalyst surface could become unstable.

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the platinum catalyst of Tsusaka et al. 50-250  $\mu\text{m}$  thick, since at smaller thicknesses, there could be an insufficient amount of catalyst, while at larger thicknesses, the catalyst surface could become unstable.

### ***Response to Arguments***

7. Applicant's arguments, see Remarks, filed October 14, 2008, with respect to the rejection of claims 1-3, 5 and 6 under Fuglevand et al. in view of Morishima et al. have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground of rejection is made, see above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alix Elizabeth Echelmeyer whose telephone number is (571)272-1101. The examiner can normally be reached on Mon-Fri 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PATRICK RYAN/  
Supervisory Patent Examiner, Art Unit 1795

Alix Elizabeth Echelmeyer  
Examiner  
Art Unit 1795

aee